

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

David Hargrove,)	Civil Action No.: 4:09-cv-00774-RBH
)	
Plaintiff,)	
)	
v.)	ORDER
)	
Darlene Drew, in her individual capacity,)	
M. Holland, in his individual capacity,)	
R. Proffitt, in his individual capacity,)	
Lieutenant Harper, in his individual)	
capacity,)	
)	
Defendants.)	
_____)	

Plaintiff, proceeding *pro se*, brings this action pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). He is currently an inmate at Federal Correctional Institution, Bennettsville, a facility of the Federal Bureau of Prisons (“BOP”) in South Carolina.

Plaintiff filed his original complaint on March 26, 2009. In his complaint, Plaintiff seeks monetary damages for alleged violation of his First Amendment Rights based on retaliation and denial of access to the court.

On September 17, 2009, United States Magistrate Judge Thomas E. Rogers, III¹ issued his [Docket Entry #19] Report and Recommendation. The Magistrate Judge recommended that “[t]he complaint should be dismissed for failure to state a claim upon which relief may be granted.” Report [Docket Entry #19] at 1. Plaintiff’s objections to the Report were due by October 5, 2009.

¹ This matter was automatically referred to Magistrate Judge Rogers pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(d) (D.S.C.).

However, on October 15, 2009, Plaintiff filed a [Docket Entry #27] Motion to Amend/Correct his complaint. Attached to the motion is Plaintiff's Proposed Amended Complaint.

Standard of Review

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The court is charged with making a *de novo* determination of those portions of the report and recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to him with instructions. 28 U.S.C. § 636(b)(1).

The right to *de novo* review may be waived by the untimely filing of objections. *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). The district court need not conduct a *de novo* review when a party makes only "general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." *Id.* Moreover, in the absence of objections to the Report and Recommendation, this court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

Discussion

Plaintiff did not file objections to the Magistrate Judge's Report and Recommendation.² After reviewing the Report and applicable law, and in the absence of objections, the court agrees

² The court notes that Plaintiff's [Docket Entry #27] Motion to Amend/Correct Complaint was also entered on the Docket as [Docket Entry #26] Objection to Report and Recommendation. However, the motion contains no objections and solely seeks to amend Plaintiff's complaint pursuant to Rule 15(a).

with the Magistrate Judge's finding that Plaintiff's original complaint fails to state a claim upon which relief may be granted. However, the court respectfully declines to adopt the recommendation of the Magistrate Judge that the case should be summarily dismissed at this time and recommits the matter to the Magistrate Judge for consideration of the Motion to Amend.

Conclusion

For the reasons stated above, the [Docket Entry #19] Report and Recommendation of the Magistrate Judge is adopted in part insofar as it pertains to the allegations in the original complaint. However, the matter is **RECOMMITTED** to the Magistrate Judge for consideration of the Motion to Amend.

IT IS SO ORDERED.

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

November 10, 2009
Florence, South Carolina